



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF

Rudolph Winfrey,
Complainant

and

City of Chicago, Department of
Streets and Sanitation,
Respondent

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CHARGE NO.: 1993CN0525
EEOC NO.:
ALS NO.: 7546

RECOMMENDED ORDER AND DECISION

This matter is before me for consideration of Respondent's Motion to Dismiss Complaint of Human Rights Violation Based Upon *Res Judicata* Effect of Federal Court Ruling ("Motion") first submitted on September 7, 2001 and entered as amended on October 29, 2001 after it was served on the Illinois Department of Human Rights. Complainant's response was timely filed on December 13, 2001 and Respondent's reply was timely filed on January 11, 2002. The Motion is now ready for decision.

Statement of the Case

The complaint in this case was filed by Complainant on July 23, 1993. Respondent was given until October 12, 1993 to file a verified answer to the complaint, but failed to do so. After Complainant filed a motion for default on October 29, 1993, Respondent was given further leave to file its answer and did so on November 22, 1993. After a contentious period of discovery, Complainant was ordered to submit a first draft of the joint pre-hearing memorandum ("JPHM") to Respondent by February 28, 1996. In the meantime, Complainant apparently filed a new charge with the federal Equal Employment Opportunity Commission ("EEOC") in 1994. Charge No. 1994CF2439, EEOC No. 21B941732. Then, in lieu of filing a JPHM in this case, Complainant

filed a complaint with the United States District Court for the Northern District on February 29, 1996 after issuance of a right to sue letter under Charge No. 1994CF2439, with the defendant named as the “City of Chicago.” On that same date, Complainant filed his “Motion to Stay Proceedings” at the Commission.

There was apparently no opposition to the motion to stay and it was granted on March 13, 1996. Status hearings regarding the stay were conducted on April 3, 1997, June 4, 1997, December 17, 1997, December 24, 1997, January 28, 1998, March 18, 1998, June 17, 1998, December 16, 1998, April 28, 1998, October 27, 1998, April 26, 2000, September 27, 2000, March 7, 2001, April 11, 2001 and July 11, 2001. In the federal district court, Respondent’s motion for summary judgment was granted. A decision on Complainant’s appeal of the district court’s action to the federal 7th Circuit Court of Appeals was issued on July 26, 2001. Winfrey v. City of Chicago, 259 F.3d 610 (7th Cir. 2001). The present case was returned to the active docket at the Commission on July 27, 2001. Complainant’s motion for rehearing of the 7th Circuit decision was denied on September 24, 2001 and no further appeal was pursued in the federal system.

Findings of Fact

1. Complainant filed charge No. 1993CN0525 with the Illinois Department of Human Rights on or about August 31, 1992, alleging on his own behalf to have been aggrieved by practices of discrimination (handicap) prohibited by Section 1-102(A) and 1-103(I) of the Illinois Human Rights Act. Complainant filed his complaint directly with the Commission on July 23, 1993 (“Commission Complaint”).

2. At all times relevant, Respondent was an “employer” as defined by the Act and was subject to the provisions of the Act.

3. Complainant filed a complaint with the United States District Court for the

Northern District of Illinois on February 29, 1996 (“federal complaint”). This complaint alleges that the City of Chicago denied him certain rights under the federal Americans with Disabilities Act (ADA).

4. The federal complaint recounted Complainant’s entire employment history with the City of Chicago. Paragraph 65 of the complaint states in full: “65. Winfrey was denied the right to return to work in 1992 and every day thereafter solely on the basis of the nature and severity of his disability in violation of Section 504.” This, in summary and substance, is a restatement of Complainant’s charge and complaint now before the Commission.

5. On February 29, 1996, Complainant filed a motion for stay with the Commission including, among other assertions, Paragraph 2 which states in its entirety: “2. Complainant’s claim in the federal action arises out of the same facts and circumstances that form the basis of the action pending before the HRC.”

6. Complainant’s federal action was dismissed by the district court in response to Respondent’s motion for summary judgment and this action was affirmed by the federal 7th Circuit Court of Appeals in an opinion dated July 26, 2001. Winfrey v. City of Chicago, 259 F.3d 610 (7th Cir. 2001).

Conclusions of Law

1. Complainant is an “aggrieved party” and Respondent is an “employer” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)(c) respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. There is an identity among the parties, facts and subject matter between the

complaint filed by Complainant with the Commission on July 23, 1993 and that filed by Complainant with the federal district court on February 29, 1996.

4. The facts stated in the complaint filed by Complainant with the Commission on July 23, 1993 are restated in support of the complaint filed by Complainant in the federal district court on February 29, 1996 and are further alleged in summary and substance in Paragraph 65 of the federal complaint.

5. Complainant's motion for stay of his Commission complaint, also filed February 29, 1996, admits in Paragraph 2 that his "claim in the federal action arises out of the same facts and circumstances that form the basis of the action pending before the HRC."

6. The disposition of Complainant's case in the federal courts is *res judicata* with regard to his complaint at the Commission.

7. The complaint here should be dismissed with prejudice.

Discussion

Respondent's Motion asks that this case be dismissed because the final disposition of Complainant's federal case is *res judicata*. The standards for application of the doctrine of *res judicata* were stated by the Commission in Blissitt and City of Chicago, Ill. H.R.C. Rep. (1987CF1454, January 13, 1995). There are three requirements that must be met: a) the parties in the present action must be the same or be in privity with the parties in the prior action; b) the cause of action must be the same in both cases; and, c) a decision on the merits must have been made in the earlier case. All three of these requirements are met in the instant case.

Based on the briefs filed in support of and in opposition to Respondent's Motion, there is no dispute that the first and third requirements listed in Blissitt have been satisfied. That is, the parties are the same in both the federal case and the case now before the Commission. Further, the action of the federal court constitutes a final disposition on the merits of the complaint filed in that forum. Complainant, however, disputes that the cause of action is the same in both the federal and Commission cases. In support of this position, he asserts that he is not bound by the statement embodied in Paragraph 2 of the motion for stay filed by his counsel before the Commission on February 29, 1996 which states in its entirety: "2. Complainant's claim in the federal action arises out of the same facts and circumstances that form the basis of the action pending before the HRC."

Complainant now attempts to repudiate the statement made in Paragraph 2 of his motion to stay the progress of his case at the Commission. Although he now asserts that he "was not really aware" that the motion for stay included the admission in Paragraph 2, he does not provide any evidence to support a conclusion that the statement is "unreasonable, violative of public policy, or the result of fraud." Fitzpatrick v. Human Rights Comm'n, 267 Ill.App.3d 386, 390, 642 N.E.2d 486, 204 Ill.Dec. 785 (4th Dist. 1994). A party can repudiate the actions of his counsel only if one of these conditions can be proved. No affidavit or other evidence is submitted by Complainant to even suggest that one of these conditions is applicable.

However, even if Complainant prevailed on this first point, the record amply shows that there is an identity between the causes of action in the federal and Commission cases. A finding that the Paragraph 2 statement by counsel noted above was somehow beyond the scope of her authority or was otherwise *ultra vires* would not suffice to negate this requirement for establishing *res judicata*. An examination of the complaints filed in the two cases can only lead to a conclusion that the allegations in the Commission complaint are included in their entirety within the federal complaint. While they are not repeated verbatim, all of the factual allegations in the Commission

complaint are included in the “statement of facts” that is included in Paragraphs 6 through 32 of the federal complaint. Then, in Paragraph 65 of Count 1 in the federal complaint, Complainant alleges that he “was denied the right to return to work in 1992 and every day thereafter solely on the basis of the nature and severity of his disability.” This embodies the thrust of his Commission complaint in its entirety. Accordingly, I find that there is identity of the cause of action alleged by Complainant in his Commission complaint and in his federal complaint.

All three elements of the test for *res judicata* stated in Blissitt are met in the present case and I recommend that this complaint be dismissed with prejudice.

Before closing, however, I must acknowledge the final statement made by Complainant, who remains employed by Respondent at the present time, in his response to the Motion. In Paragraph 10 of the response, Complainant states that he “fears the adverse effects of the City’s assessment of (my) inability to do the job and the possibility of (my) immediate dismissal.” While Complainant does not provide any specific evidence of retaliatory intent on the part of Respondent, and Respondent has not hinted at any such intent in any written or oral submission to the Commission, I would commend to both parties a review of Section 6-101(A) of the Illinois Human Rights Act (775 ILCS 5/6-101(A)) and relevant case law.

Recommendation

It is recommended that the complaint and underlying charge in this matter be dismissed with prejudice.

ENTERED:

May 20, 2002

BY: _____
 DAVID J. BRENT
 ADMINISTRATIVE LAW JUDGE
 ADMINISTRATIVE LAW SECTION

Service List for Winfrey #7546 as of 5/20/02:

George Thomson
Assistant Corporation Counsel
City of Chicago
30 North LaSalle Street
Suite 1020
Chicago, Illinois 60603

Rudolph Winfrey
P.O. Box 51524
Chicago, Illinois 60651

Jacqueline S. Lustig
General Counsel
Illinois Department of Human Rights
100 West Randolph Street
Suite 10-100
Chicago, Illinois 60601